

²³
~~23~~. The device according to claim ¹⁹~~29~~, wherein said fingers comprise wire.

²⁴
~~24~~. The device according to claim ²³~~33~~, wherein said fingers are electrically conductive.

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~~25~~. The device according to claim ²⁴~~34~~, wherein said fingers comprise copper wire.

²⁶
~~26~~. The device according to claim ¹⁹~~29~~, wherein said device comprises from four to twenty-four said fingers.--

REMARKS

Claims 1-4 and 6-20 remain herein. New claims 21-36 are added hereby.

The applicants thank Examiner Yu for the courtesies extended during the interview conducted on February 21, 2001. The substance of the discussion during that interview is incorporated in the following remarks.

In the interview, particular attention was given to new claims 21-36. Prior to the interview, copies of new claims 21-36 were provided to Examiner Yu, and since the interview, claims 21-36 have since been amended, as discussed herein and as set forth above, to incorporate requests made by Examiner Yu during the interview.

In the parent application, claims 1-4, 6, 10-16 and 20 were rejected under 35 U.S.C. 102(b) over U.S. Patent No. 836,217 (Rowe '217), and claims 7-9 and 17-19 were rejected under 35 U.S.C. 103(a) over Rowe '217.

As discussed during the February 21, 2001 interview, new claims 21-36 are not rejectable over Rowe '217 for the following reasons:

New claim 21 recites a head receiving space which extends between the free ends of the

fingers and the opposite ends of the fingers, and recites that the opposite ends of the fingers are connected together. In Rowe '217, the space extends between the hooks 10 at the free ends of the fingers (the "free ends") and locations on the fingers which are adjacent to the outer end 1 (the "opposite ends") shown in Figs 1 and 2 of Rowe '217. In Rowe '217, the "opposite ends" of the fingers are not connected, contrary to recitation in claim 21. In Rowe '217, it would not be possible for the opposite ends of the fingers to be connected, because in order for the device of Rowe '217 to function, the portions of the fingers which are adjacent to the outer end 1 in Fig. 2 (i.e., the "opposite ends" of the fingers, from which the space extends to the "free ends" of the fingers) must be able to move relative to one another, in order to be able to pull the handle 11 upward relative to the cross-bar 4, operating the device toward the position shown in Fig. 1. Likewise, if the "opposite ends" of the fingers were connected, it would not be possible to operate the device from the position shown in Fig. 1 to the position shown in Fig. 2.

In addition, claim 21 recites that the fingers define a self-supporting head-receiving space. In Rowe '217, to the contrary, the fingers do not define a self-supporting space, but rather are supported by the outer end 1 to define a space.

During the interview, Examiner Yu requested that functional language be inserted into claim 21, relating to the function of the opening being of a circumference smaller than a circumference of the head (antecedent basis for which appears in line 3 of claim 21). It was agreed that insertion of the expression "whereby said head can fit inside said space with said free ends in contact with said head" would satisfy this request by the Examiner, and such an insertion has been made as set forth above, even though the applicants disagree with the Examiner that there is any basis for requiring such recitation.

With regard to claim 29, it is noted that claim 29 is allowable over Rowe '217 for at least the same reasons discussed above that claim 21 is allowable over Rowe '217. During the

interview, Examiner Yu indicated that claim 29 would be allowable over Rowe '217 if amended to recite

"each of said fingers having a substantially transversely extending portion immediately adjacent the handle, each said substantially transversely extending portion being followed by a contiguous portion extending downwardly and inwardly from said substantially transversely extending portion, said contiguous portion terminating in said free end"

in place of:

"each of said fingers having an intermediate length that extends generally transversely from said handle and a contiguous length extending downwardly and inwardly from said intermediate length and terminating in said free end"

which appeared in claim 29 as initially proposed. Although it is the applicant's position that claim 29 as initially proposed is patentable over Rowe '217, in order to expedite allowance of the present application, the revised recitation requested by Examiner Yu is incorporated into claim 29 as set forth above. Claim 29 is allowable over Rowe '217 for the additional reasons that Rowe '217 fails to disclose or suggest a device in which each of the fingers has a substantially transversely extending portion immediately adjacent the handle, each substantially transversely extending portion being followed by a contiguous portion extending downwardly and inwardly from the substantially transversely extending portion, the contiguous portion terminating in the free end of the finger.

Favorable consideration of claims 21-36 is requested.

As noted above, in the parent application, claims 1-4, 6, 10-16 and 20 were rejected under 35 U.S.C. 102(b) over U.S. Patent No. 836,217 (Rowe '217), and claims 7-9 and 17-19 were rejected under 35 U.S.C. 103(a) over Rowe '217.

Claim 1 recites a head massaging device comprising a plurality of resilient fingers defining a head receiving space, in which, in use, when the device is lowered onto the head so that the head enters the head receiving space through the opening, the free ends of the fingers

apply pressure to and thus massage the head.

As noted in the Response filed in the parent application on August 21, 2000, Rowe '217 fails to disclose or suggest a structure in which, when the structure is lowered onto a head so that the head enters a head receiving space defined by resilient fingers, the free ends of the fingers apply pressure to and thus massage the head. In the case of Rowe '217, if an attempt were made to lower the forceps onto a head so that the head enters the head receiving space, and if the head were of a small enough size that the forceps could open far enough to allow the head to enter through the opening defined by the fingers, after opening, the fingers would remain spread apart and not apply pressure to the head. If on the other hand the head were larger than the opening, the fingers of the forceps, which must be rigid in order for the device to function as a forceps, would block the head from entering through the opening. It would not have been obvious to modify the device of Rowe '217 to satisfy these claimed features, because doing so would render the device of Rowe '217 ineffective for its intended purpose, namely, grasping objects and holding them firmly. The present claims are directed to a head massaging device, whereas Rowe '217 is directed to a forceps. It is improper for the USPTO to argue that it would be obvious to modify Rowe '217 in order for it to function more effectively as a head massaging device (a function which is clearly contrary to the functions provided by a forceps). The October 31, 2000 Office Action did not address these arguments—indeed, there is no disclosure in Rowe '217 which satisfies or renders obvious these features recited in claim 1, and so claim 1 (as well as claims 2-4 and 6-11, which depend from claim 1) is patentable over Rowe '217.

Claim 12 recites that each finger has a free end and an opposite end, the opposite ends being connected together, the head receiving space extending between the free ends of the fingers and the opposite ends of the fingers. As discussed above, in Rowe '217, the space between the fingers of the forceps does not extend from the free ends of the fingers to their opposite ends

which are connected to the handle 11, and any modification of Rowe '217 to satisfy that feature would not be possible without rendering the device incapable of performing the functions for which the device disclosed in Rowe '217 is intended. In view of this, claim 12 (as well as claims 13-20, which depend from claim 12) is patentable over Rowe '217.

Reconsideration and withdrawal of this rejection are requested.

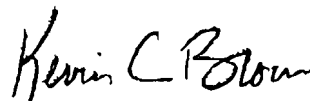
In the parent application, claims 1-4 and 6-11 were rejected under 35 U.S.C. 112, second paragraph, on the alleged basis that the expression "smaller than said head" is vague and indefinite. In response, it is respectfully noted that antecedent basis for the head is provided in claim 1, line 2, where the "head" is recited in the form of a workpiece—i.e., it is recited, but is not an element of the claimed device. Denial of the applicant's right to recite relationships between an element of the claimed device and a workpiece used in conjunction with the device would deny the applicant the right to claim his invention as he sees fit. Reconsideration and withdrawal of this rejection are requested.

In view of the above, favorable consideration is solicited.

If the Examiner believes that contact with Applicant's attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call Applicant's attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,
BURR & BROWN



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Date

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